

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

RECEIVED
JUL - 1 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the matter of

Implementation of the Pay Telephone
Reclassification and Compensation
Provisions of the Telecommunications Act
of 1996

CC Docket No. 96-128

COMMENTS OF AMERITECH ON PAY TELEPHONE ISSUES

ALAN N. BAKER
Attorney for Ameritech
2000 West Ameritech Center Drive
Hoffman Estates IL 60196
(847) 248-4876

July 1, 1996

No. of Copies rec'd

0214

COMMENTS OF AMERITECH ON PAY TELEPHONE ISSUES

Table of Contents

SUMMARY.....	ii
I. Per-Call Compensation Plan	1
A. The Commission Should Prescribe Per-Call Compensation for Each and Every Call, Not Just Dial-Around Calls, Subject to the Parties' Ability To Negotiate Individually for "0+"	3
B. The Commission Should Establish Clear Federal Guidelines for State Regulation of Local Coin Rates.....	7
C. Compensation Should Be Paid by Carriers	8
D. Pay Telephone Owners Who Expect Compensation Should Have To Bill for It.....	8
E. Compensation for International Calls Should Be Included.....	12
II. Reclassification of BOC Pay Telephones as CPE	12
A. Ameritech Will Reclassify Its Pay Telephones as CPE	12
B. Ameritech Will Comply with Computer III Requirements.....	15
C. Ameritech Will Offer Tariffed Coin Lines	16
III. BOC Selection of InterLATA Carriers at BOC Pay Telephones	18
A. BOC Selection of InterLATA Carriers Will Not Disserve the Public Interest.....	18
B. The Commission Need Not Be Concerned That the BOC Might Select Its Own Affiliated Interexchange Carrier	22
IV. Public Interest Pay Telephones	29
A. Definition/Criteria	29
B. Funding.....	32
V. Other Issues.....	32
A. The Commission's Anti-blocking Rules Will Be Adequate If the "Dialing Parity" Currently Provided by LECs Is Preserved.....	32
B. Keypads Without Letter Markings Should Be Prohibited.....	37
VI. Conclusion	38

COMMENTS OF AMERITECH ON PAY TELEPHONE ISSUES

SUMMARY

Ameritech is the only LEC payphone provider that has removed pay telephone costs from its interstate carrier common line charge and begun to recover those costs in a per-call charge on interstate calls originating at its pay telephones. Ameritech's charge is collected just the same whether a call is made using "0+" to reach the presubscribed carrier or by dialing around the presubscribed carrier. In contrast, the compensation plan proposed in the NPRM would provide a per-call charge only for dial-around calls, and would leave "0+" compensation solely as a matter to be negotiated between the carrier and the pay telephone owner. This plan for "0+" calls would not comply with Section 276, which requires the Commission to establish a "per call" plan under which compensation is paid on "each and every intrastate and interstate call." Therefore, even if the Commission decides to permit negotiated compensation for "0+" calls, it is also required by the statute to establish a standard per-call compensation amount to apply to those calls in the absence of any agreement between the carrier and the pay telephone owner. Presumably the standard "0+" rate would be the same as the dial-around rate.

Ameritech supports the Commission's conclusion that Section 276 commits the regulation of the local coin "drop rate" to federal jurisdiction as part of the per-call compensation plan. However, the Commission should allow the states to continue to regulate this rate in the first instance, subject to guidelines making clear the states' need to follow the federal requirement that subsidies be removed from pay telephone rates.

Ameritech's compensation tariff proves that the LEC can gather all information needed to bill for all compensable call types from pay telephones. Since Ameritech is willing to provide, for reasonable compensation, such parts of that information as may be needed by private pay telephone companies for their own billing (particularly on "800" calls), there is no need for pay telephone owners to rely upon self-reporting by carriers as a permanent feature of the per-call compensation plan.

Section 276 directs the Commission to allow BOCs to begin to participate in the selection of interLATA carriers at their pay telephones unless the Commission finds it is not in the public interest. The Commission should allow such participation to commence. The present rule hinders the BOCs in their dealings with those premises owners who prefer to deal with a single supplier. Moreover, some premises owners choose unsuitable carriers, which damages the reputation of the BOC pay telephone among end users, who assume

that the BOCs choose the carriers. Finally, the Commission's decision to allow compensation for "0+" calls to be based on negotiation cannot work equitably unless the BOCs can negotiate the same as the competitive providers. Furthermore, a BOC pay telephone should be allowed to select its own affiliated interLATA carrier once it is authorized to provide in-region interLATA services.

The Commission's rules prohibit pay telephone providers and other aggregators from blocking the dialing of "10XXX" and other dial-around patterns. Those rules have been instrumental in promoting customer choice and restraining abusive charges. However, they would be rendered ineffective if LECs were no longer required to honor those dialing sequences. The "dialing parity" rules of Section 251(b)(3) of the 1996 Act do not include any express reaffirmation of the LECs' duty to honor "10XXX" and other access codes. Therefore the Commission, in implementing Section 251(b)(3) of the 1996 Act, must be careful to expressly affirm that the equal access dialing requirements long established under authority of the 1934 Act are not diminished, and thus avoid any possible claim that those rules had been "superseded" by operation of Section 251(g) of the 1996 Act.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the matter of

Implementation of the
Pay Telephone Reclassification and
Compensation Provisions of the
Telecommunications Act of 1996

CC Docket No. 96-128

COMMENTS OF AMERITECH ON PAY TELEPHONE ISSUES

Ameritech¹ hereby responds to the Commission's Notice of Proposed Rulemaking released June 6, 1996, on the subject of the treatment of pay telephones under Section 276 of the Telecommunications Act of 1996.

I. Per-Call Compensation Plan

The keystone of Section 276 is its mandate to the Commission to prescribe, within nine months, regulations to "establish a per call

¹ Ameritech comprises Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, The Ohio Bell Telephone Company, Wisconsin Bell, Inc., and various affiliates.

compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone.” Ameritech is able to report, as the Commission itself notes in the NPRM, that Ameritech has already established a functioning per-call compensation plan that is providing fair compensation at Ameritech’s pay telephones already, well in advance of the statute’s scheduled requirements. Pursuant to a waiver order granted to Ameritech and Southwestern Bell by the Common Carrier Bureau and released March 1, 1996, Ameritech has filed a tariff to collect a 24.8-cent “set use fee”² on each interstate call placed at its pay telephones and that tariff took effect on May 24, 1996.³ The experience gained with Ameritech’s pay telephone compensation plan provides valuable information which the Commission may find useful

² Although the official name of this new pay telephone charge is the “Pay Telephone Use Fee,” Ameritech sometimes informally calls it the “set use fee.” This terminology is different from that later utilized by the Commission. As defined in Paragraph 26 of the NPRM, the Commission uses “set use fee” to mean “a fee that the IXC would bill and collect from the end user.” In contrast, Ameritech’s set use fee is a charge that Ameritech collects from the IXC. To avoid confusion Ameritech will usually refer herein to the Ameritech tariffed charge as its “IXC pay telephone use fee.”

³ In Paragraph 36 of the NPRM, the Commission states that the Ameritech tariff then under review provided for a charge of 25.6 cents. However, the amount later permitted to go into effect was 24.8 cents.

in fashioning a compensation plan of general availability throughout the pay telephone industry for both intrastate and interstate calls.

- A. *The Commission Should Prescribe Per-Call Compensation for Each and Every Call, Not Just Dial-Around Calls, Subject to the Parties' Ability To Negotiate Individually for "0+."*

Ameritech's IXC pay telephone use fee referred to above applies on every interstate call no matter how it is dialed, and thus it differs from the plan now envisioned by the Commission in the NPRM. Although Section 276 of the Act plainly requires that a per-call compensation rate be established "for each and every completed intrastate and interstate call," the Commission ignores this per-call mandate in its treatment of calls from pay telephones that are dialed on an "0+" basis.⁴ Thus, Paragraph 16 of the NPRM tentatively concludes that the Commission "need not prescribe per-call compensation for 0+ calls because competition in this area ensures 'fair' compensation for PSPs."

Ameritech believes that the Commission's tentative conclusion excluding "0+" calls from the reach of per-call compensation is not in compliance with Section 276, which clearly and unmistakably requires

⁴ In other words, all of the credit card, third-number, and collect calls placed using the presubscribed carrier associated with the originating pay telephone would not be part of the per-call compensation plan.

per-call compensation for “each and every” pay telephone call quite without regard to how the call may have been dialed. Ameritech strongly urges the Commission to reconsider its errant reading of the law. The Commission should establish a fixed charge for “0+” calls just the same as for dial-around calls, especially when that can be done without interfering with the ability of the pay telephone owner and the interexchange carrier to agree upon some different amount.

Only a standard “0+” compensation amount can comply with the mandate of the law. Section 276 surely intends, by its deliberate reference to “per call compensation,” and by its use of the emphatic expression “each and every,” to communicate the idea that the exact same type of charge should apply to *all* compensable calls from pay telephones.

Moreover, the circumstances surrounding the enactment of Section 276 make plain that Congress could not have intended that the Commission should allow per-call compensation to be *exclusively* the subject of private negotiations between the pay telephone owner and the presubscribed interexchange carrier, since it was not yet known at the time the law was passed — just as it is *still* not clearly known even today, during the pendency of this rulemaking — whether the BOCs will ever be authorized to participate in the selection of the inter-

exchange carriers serving their own pay telephones. Of course, without that right the BOCs can never hope to negotiate fair compensation from the IXC. Thus it is entirely unreasonable to suppose that Congress could have meant to mandate a system of negotiated rates for "0+" calls, for it was still uncertain whether the BOCs would even have the power to enter into such negotiations.

Furthermore, even though the statute commands the Commission to establish a per-call charge for every call, there is no reason why that standard charge for all calls could not coexist with a system of negotiated payments for the "0+" calls. The statute does not call for a rigid, tariff-like rate regulatory scheme, but requires only some form of "compensation plan." Therefore, nothing in Section 276 would prohibit an IXC from agreeing to pay, or a payphone owner from receiving, an amount for "0+" that is *more* than the standard per-call rate if they voluntarily choose to do so. Very possibly, the IXC would often agree to a higher rate at pay telephones with high interLATA usage.⁵ Thus there would still be available the benefit of what the

⁵ Of course the pay telephone owner would have no incentive to agree to a rate that was *lower* than the standard amount fixed by the Commission, and therefore the standard amount would effectively become the minimum amount that could be negotiated. However, Ameritech submits that that is exactly what Congress, in requiring "fair compensation" for the pay telephone owner on "each and every . . . call", intended.

Commission perceives as a competitively established charge resulting from negotiation, even while the standard fixed charge would be in place to satisfy the Congressional mandate. Another advantage of fixing a standard "0+" charge, of course, would be that the standard charge would apply at telephones for which there is no agreement between the telephone owner and the IXC; this will ensure that BOCs, who mostly do not have existing agreements, will begin to receive fair compensation as soon as the Commission promulgates its rules. Otherwise, the beginning of compensation will lag behind the removal of pay telephone costs from the carrier common line charge, a result not contemplated by the statute.

Accordingly, Ameritech urges the Commission to change its tentative conclusion and to provide that pay telephone owners will receive the same per-call compensation for "0+" calls as for dial-around calls, subject to the ability of the payphone owner and the interLATA carrier to agree to override the standard "0+" charge with a negotiated charge.⁶

⁶ On the other hand, if the Commission nevertheless determines to apply a system of negotiated compensation for "0+" calls, *without* establishing any standard charge to apply in the absence of agreement, the Commission should also provide for an interim form of "fair" compensation for the BOCs on account of the difficulty they will face in negotiating new contracts with IXCs for payphones that are already in place. In particular, in Ameritech's

(Footnote Continued . . .)

B. The Commission Should Establish Clear Federal Guidelines for State Regulation of Local Coin Rates

In Paragraphs 19–20 of the NPRM, the Commission concludes that its mandate to establish “fair compensation for each and every completed intrastate and interstate call” includes the authority to exert federal jurisdiction over “[t]he rate for the most common type of call, the local coin call,” even though that rate is presently regulated by state commissions. It asks for comments upon how it should exercise that authority.

Ameritech submits that in the interests of federalism, the Commission should allow states to continue to set the coin rates for local payphone calls. However, the Commission should explicitly instruct the state commissions to allow those rates to recover all costs incurred in the provision of local pay telephone service, with no subsidies from other local exchange services or from interexchange carriers. LECs and other payphone providers should be allowed, but not required, to request compensatory rates, even if the state has adopted a rate freeze

(Footnote Continued . . .)

case, the Commission should allow Ameritech to continue to collect its tariffed IXC pay telephone use fee on “0+” calls at all its payphones until that fee can be replaced with a negotiated payment under the Commission’s compensation plan. Since Ameritech has long since removed pay telephone costs from the interstate carrier common line charge, continuation of the tariffed 24.8 cents is essential to avoid a revenue shortfall.

or other cap on local payphone drop rates. Costs should include all payphone specific costs, switched local network usage, an allocation of the costs of the set, inside wire, and local loop, plus a reasonable profit.

In addition to the rate applicable for local coin service, the rate for directory assistance at pay telephones should be part of the same regulatory scheme.

C. Compensation Should Be Paid by Carriers.

In Paragraphs 24–28 of the NPRM, the Commission asks which entities should pay the pay telephone per-call charges and has tentatively concluded that it should adopt a “carrier-pays” compensation mechanism. This is in agreement with Ameritech’s IXC pay telephone use fee and Ameritech therefore supports the Commission’s conclusion. Ameritech definitely opposes any attempt to make the end user pay the fee or any part of it by depositing coins on calls for which coins are not otherwise required, such as on calling card calls.

D. Pay Telephone Owners Who Expect Compensation Should Have To Bill for It.

In Paragraphs 29–31 of the NPRM, the Commission seeks comment upon which entities should bear the responsibility for “tracking” (*i.e.*, measuring and billing) the per-call charges that the

Act provides for interexchange carriers to pay to pay telephone providers.

In instituting its IXC pay telephone use fee, Ameritech has been able to modify its carrier access billing system, which is used to bill all access charges for IXCs, so as to isolate the calls that originate at Ameritech pay telephones. This has made it possible for Ameritech to do all the measuring and recording that is necessary to make the IXC pay telephone use fee tariff effective, billing the IXC for all calls made from Ameritech's pay telephones whether dialed "1+", "0+", with an access code, or using "800". In fact, the only difficulty that has been alleged against Ameritech's billing involves determining whether "800" calls are interstate or intrastate.⁷ That inability, however, will not be a problem in the per-call compensation plan to be established by

⁷ In routing an "800" call, the LEC queries a database to determine, from the "800" telephone number, the identity of the interexchange carrier serving that number, in order that the call may be routed to the right. Thus it is relatively simple to determine the quantity of calls sent to a particular carrier. On the other hand, the query does not ordinarily return to the LEC the identity or location of the individual "800" customer (i.e., the called party), and without knowing the ultimate destination it is impossible for the LEC to determine whether the call is intrastate or interstate. This problem is not limited to pay telephone calls, but affects all "800" calls. Accordingly, for the administration of its IXC pay telephone use fee, Ameritech decided to apply each IXC's usual PIU factor ("percent interstate use") to the count of the IXC's "800" calls. In addition, Ameritech offered to apply a pay-telephone-specific PIU factor at Ameritech pay telephones for any IXC that chose to develop one.

the Commission under the Act. Since Section 276 mandates compensation for “each and every completed intrastate and interstate call” — meaning, surely, that the intrastate and interstate charges must be the same — the inability to know the destination of the “800” call will not be a factor affecting the accuracy of billing.

Ameritech believes that a billing mechanism similar to that which has functioned so successfully for Ameritech could be instituted by other LECs to bill compensation for their own pay telephones. Furthermore, the billing capabilities of the various LECs can be utilized to overcome the shortcomings in the ability of private pay telephone owners to bill for each and every call, particularly their difficulty with “800” calls.⁸ In fact, in Paragraph 48 of the NPRM, the Commission has already proposed that LEC “per-call tracking capabilities” should be made available to private pay telephone providers. Ameritech would offer a service for billing charges for pay telephone compensation fees for various calls, including “800” calls, to any private pay telephone provider in Ameritech territory, provided that Ameritech receives

⁸ As explained above, see note 7, *supra*, it is the LEC who determines the identity of the carrier to whom the “800” call will be sent, and this fact cannot be known at the pay telephone instrument — be it as “smart” as may be — unless it is reported back to the pay telephone owner by the LEC, or unless the carrier voluntarily reports usage.

reasonable compensation for such services. Under such a plan, there would be no need for interexchange carriers to develop these tracking capabilities as the Commission has proposed

In fact, Ameritech submits that because every pay telephone owner will be able to do its own tracking, or to obtain it conveniently, there is no reason why the rule adopted here should deviate from the pattern universally followed in the telecommunications industry, as well as in the business world at large, that the party who expects payment should take the responsibility for preparing a bill and rendering it to the party who is going to pay. In other words, it should be the responsibility of the pay telephone owner, if it expects to receive the compensation that the Commission will be requiring under Section 276, to count the calls sent from its pay telephones IXCs and to present a bill for those charges to each IXC every month.

The opposite rule, which would have the IXCs who are responsible for payment counting the calls themselves, would depart from common business practices, and no pay telephone owner ought to be compelled to accept payment on that basis except in the unusual case where the payphone owner elects not to provide its own capability of counting calls, or elects not to use any of the alternative counting methods that might be available to it.

Under such a system, the administration of per-call compensation would be different than discussed in Paragraphs 32–35 of the NPRM. The use of tracking by IXC's would be only a temporary expedient until tracking by pay telephone owners can be put in place universally, and afterwards only to the extent that the IXC needed tracking as a tool to audit the bills presented by the pay telephone owner.

E. Compensation for International Calls Should Be Included.

In Paragraph 18 of the NPRM, the Commission has stated a tentative conclusion that pay telephone compensation should be paid on international telecommunications as well as the “completed intrastate and interstate” calls expressly enumerated in the Act. While the 1996 Act thus does not mandate international compensation, the Commission concludes that it already has the power to provide for such compensation under its general jurisdiction under Sections 4(i) and 201(b) of the 1934 Act. Ameritech sees no reason or ground for disputing the Commission’s tentative conclusion.

II. Reclassification of BOC Pay Telephones as CPE

A. Ameritech Will Reclassify Its Pay Telephones as CPE.

In Paragraph 42 of the NPRM, the Commission tentatively concludes that the Act’s mandate to remove all subsidies requires that the

pay telephones of incumbent LECs must be treated as unregulated, detariffed CPE. Ameritech does not seek to dispute this conclusion except insofar as it is needlessly limited to incumbent LECs; Section 276(b)(1)(B), upon which the Commission bases its tentative conclusion, is not limited in its scope to any particular category of LEC.

In Paragraphs 49 and 50 of the NPRM, the Commission takes up the questions of transferring pay telephone equipment to unregulated status and discontinuance of the carrier common line access charge rate elements insofar as they are attributable to pay telephone costs. Ameritech, of course, has already been through the latter process in regard to its IXC interstate pay telephone use fee tariff.

While the Commission generally proposes that the accounting treatment of the asset transfer be deferred until a later proceeding, it also observes, "Our rules provide that, if reallocations of telecommunications plant . . . from regulated to nonregulated operations are required, such plant will be transferred at undepreciated baseline cost plus and interest change . . ." This is evidently based on the shared network forecasting true-up associated with Section 64.901(b)(4) of the Rules. However, Ameritech believes that the applicable rule should be the asset valuation rules for Transactions with Affiliates codified at Section 32.27(c), which requires that the assets be transferred at the

higher of estimated fair market value or net book value. (It should also be noted that Ameritech still advocates the changes to Section 32.27(c) that were proposed in Attachment B to its Comments of May 31, 1996, in response to the video cost allocation NPRM, CC Docket No. 96-112.) Ameritech agrees, however, that there will be no need for a phase-in period.

In response to Paragraph 51 of the NPRM, Attachment A lists all Part 32 Accounts that contain pay telephone costs for Ameritech. Specific cost pools and allocators for nonregulated investment and expenses will be used as necessary. The cost allocation manual process provides the means for Commission review and approval of any cost apportionment changes.⁹

In further response to Paragraph 51, Ameritech agrees that an exogenous cost treatment is appropriate when moving the payphone CPE from regulated to non-regulated. In answer to the issue raised in Paragraphs 53-54, an SLC should be imputed to all payphones. The pay telephone compensation fee should be set in a way that recovers both regulated and non-regulated costs including the imputed SLC.

⁹ See Section 64.903, Cost Allocation Manuals.

B. Ameritech Will Comply with Computer III Requirements.

In Section 276(b)(1)(C) of the Act, Congress has directed the Commission to prescribe “nonstructural safeguards” from BOC pay telephone service to implement the requirements that BOC pay telephone service not benefit from cross-subsidization or discrimination. The statute directs that safeguards equal to those found in the Commission’s Computer III rules should be the minimum requirement.

This subject is dealt with in Paragraphs 57–66 of the NPRM. Taking into account the express directive of the statute, Ameritech does not seek to challenge the tentative conclusions reached in regard to the applicability of Computer III and the filing of CEI and ONA plans.

However, Ameritech does question the need for any separate proceeding, as referred to in Paragraph 66 of the NPRM, to consider whether the same Computer III accounting rules should be applied to the pay telephone business on whether the accounting rules should be made even more stringent. Ameritech has already shown, in its Comments filed May 31, 1996, in response to the Commission’s Notice of Proposed Rulemaking regarding allocation of the costs of video services, CC Docket No. 96-112, that continued application of Part 64 of the Commission’s rules to pure price cap carriers is unnecessary and that

therefore the Commission should exercise its general powers under Section 10 of the Act, which allows it (and indeed requires it) to forbear from enforcing regulations and statutory provisions that have become obsolete.

In Paragraph 44 of the NPRM, the Commission seeks comment on its tentative conclusion that although pay telephones are to be treated as CPE, they will not be required to be placed in a separate subsidiary. Ameritech supports this conclusion. Inasmuch as Section 276(b)(1)(C) mandates that the rules to prevent subsidization for Bell operating companies must be “nonstructural,” it would make little sense for the rules applicable to other incumbent LECs to impose a separation requirement that is more severe.

C. Ameritech Will Offer Tariffed Coin Lines.

In Paragraph 45 of the NPRM, the Commission tentatively concludes that Section 276 requires that incumbent LECs, even if they do not provide their own pay telephone service, must offer central office coin service (i.e., a line with the same coin return and signaling features) under tariff to other pay telephone providers. This is said to be necessary to eliminate a BOC “cost advantage” and to “increase competition in the payphone industry.”

Ameritech, first of all, does not agree that this is required by the statute. Section 276 requires only that basic ratepayer revenues not be used to pay for pay telephone features, and if the BOC pay telephones still retain a cost advantage even after such cross-subsidies are eliminated, the statute does not require anything further. Moreover, no case can be made that a coin line is an essential facility, since a vital competitive pay telephone industry has arisen even without such lines.

Nevertheless, in the event the Commission adheres to this view, and since Ameritech had already begun the process of offering coin line features in its states, beginning with Illinois, Ameritech will respond to the Commission's request for comments on the treatment of particular coin functions.

As noted, an Ameritech coin line is already available as an option¹⁰ for competitive pay telephone providers under the Ameritech tariff in Illinois (Ill. C.C. No. 2, Part 13, Section 2.) Ameritech is committed to filing similar tariffs in its other states. The coin line provides central-office-based coin rating and signaling functionality, which is what is used by Ameritech's LEC pay telephones. However, the pay telephone

¹⁰ The competitive pay telephone owner may also elect a standard payphone line that is substantially the same as a single-line business line. The standard payphone line is what virtually all private pay telephones use today.

attached to the line has to be able to interface with the central office coin features, and accordingly the tariff describes the published Ameritech interface standards that apply to the service.

In addition, the coin line Ameritech provides cannot overcome the limitations of the switch as delivered to Ameritech by switch manufacturers. For example, the operator switch to which the coin line is connected is limited to a single rate table; therefore the coin line would not allow private pay telephones to select their own call rates.

Moreover, Ameritech urges the Commission to allow the states to finish what the states have started in this area. In view of the complexity of the potential issues, as well as the strong interest of the states in related local matters — such as the relation between the price of the coin line and the traditional standard payphone line — it is vital that the expertise of the states be retained on this question.

III. BOC Selection of InterLATA Carriers at BOC Pay Telephones

A. BOC Selection of InterLATA Carriers Will Not Disserve the Public Interest.

In Paragraphs 67–72 of the NPRM, the Commission seeks public comment on the application of the Congressional directive contained in Section 276(b)(1)(D) of the Act that the Commission must allow BOCs

to negotiate with premises owners in regard to the selection of the pre-subscribed interLATA carrier at BOC pay telephones “unless the Commission determines . . . that it is not in the public interest.” This would change the rule promulgated in 1988 by Judge Greene under the AT&T divestiture decree, which required the BOCs to allow the inter-LATA carrier to be chosen by the owners or proprietors of the premises on which the BOC pay telephones were located.¹¹

Ameritech submits there is no ground upon which the Commission could base any finding that participation in the selection of interLATA carriers by BOCs at their pay telephones is not in the public interest. In fact, examination of the circumstances shows that the public interest positively *requires* that such carrier selection must at last be given to the BOCs without further delay.

¹¹ See *United States v. Western Elec. Co.*, 698 F. Supp. 348 (D.D.C. 1988). Although it is sometimes convenient to describe this issue in terms of the BOC’s ability to “select” the interLATA carrier, that is not really the issue; as the NPRM points out, the premises owner always retains the ultimate right to select the interLATA carrier at any BOC or non-BOC pay telephone by virtue of the premises owner’s ability to exclude from its property any particular pay telephone (or indeed to exclude all pay telephones). Thus the true disadvantage of Judge Greene’s rule was not that it prevented the BOC from actually *selecting* the carrier, but that it precluded the BOC even from *recommending* or *suggesting* a carrier or otherwise seeking to influence the premises owner’s choice of carrier; as the judge cautioned, “if the Regional Companies ‘rewarded’ premises owners who selected AT&T or penalized those who did not, . . . they would be in violation of the decree and subject to sanctions.” *Id.*, 698 F. Supp. at 365 n.81.

Even when Judge Greene first adopted the rule he observed, “It must be recognized that presubscription by the owner of the premises is not entirely satisfactory on several levels.”¹² In the ensuing eight years, the defects of this supposedly temporary rule have become even more pronounced. The first defect is that the BOCs may not satisfy the needs of premises owners who want “one-stop shopping.” While there are, of course, some location providers who take an interest in selecting the presubscribed IXC at the pay telephones located on their premises, a great many more prefer to deal only with a single entity, both when selecting a provider initially and later during the ongoing presence of the pay telephone on their premises. Such location providers want to rely on that single entity — the pay telephone provider — to be responsible for all aspects of the pay telephone service, and they most definitely do not want to deal with payphone providers and long-distance carriers separately. Non-BOC pay telephone owners are able to exploit the BOCs’ legal disability by serving those location providers, while of course remaining free of any disadvantage or inability to serve the location providers who *do* wish to be consulted about the choice of an interexchange carrier. The BOCs seek no more on this issue than

¹² United States v. Western Elec. Co., 698 F. Supp. 348, 366 (D.D.C. 1988).